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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BEVERLY LEVINE, PHILLIP HALL, ERIN
HILLMAN, THEODORE SPRADLEY;
individuals, on behalf of themselves and others
similarly situated,

Plaintiffs,

v.

GOOGLE INC., a Delaware Corporation;
Defendant.

No. C 11-02157- JSW

**JOINT CASE MANAGEMENT
STATEMENT [AMENDED]**

No. C 11-02157- JSW

JULIANN KING, individually and on behalf of a
class of similarly situated individuals,

v.

GOOGLE INC.,
Defendants.

No. 11-cv-02167-JSW

JOINT CASE MANAGEMENT STATEMENT

CASE No. 11-cv-02157
CASE No. 11-cv-02167
CASE No. 11-cv-02230
CASE No. 11-cv-02427

MARITSA URIAS and STAN HINES, on behalf
of themselves and all others similarly situated,

No. 11-cv-02230-JSW

v.

GOOGLE INC.,
Defendant.

TRACEY LIPTON, individually and on behalf of
all others similarly situated,

Case No. 11-cv-02427-JSW

v.

GOOGLE INC.,
Defendant.

Pursuant to this Court's Order Setting Case Management Conference & Requiring Joint Case Management Conference Statement (Dkt. Nos. 8,), L.R. 16-9, and the Standing Order for All Judges of the Northern District of California, *Contents of Joint Case Management Statement*, Plaintiffs Beverly Levine, Phillip Hall, Erin Hillman, Theodore Spradley, Juliann King, Maritsa Urias, Stan Hines, and Tracey Lipton, and Defendant Google Inc. jointly submit the following Joint Case Management Statement.

1. **Jurisdiction and Service:** The complaints in *Levine, et al., v. Google Inc.*, Case No. 11-cv-02157 ("Levine"), *King v. Google Inc., et al.*, Case No. 11-cv-02167 ("King"), *Urias, et al. v. Google Inc.*, Case No. 11-cv-02230 ("Urias"), and *Lipton v. Google Inc.*, Case No. 11-cv-02157 ("Lipton") (collectively the "Related Actions") assert federal question subject matter jurisdiction based upon alleged violations of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 ("CFAA"), and in some instances the Electronic Communications Privacy Act, 18 U.S.C. § 2510 ("ECPA"). While Defendants dispute the application of the statutes invoked to the facts alleged, they do not contest subject matter jurisdiction exists due to the federal claims asserted. All Defendants have been served.

1 2. **Facts:** The Related Actions share common factual allegations. They all concern:
 2 (1) Google's Android mobile device operating system; (2) the information that devices running
 3 Android or that applications downloaded to those devices collect, store, or transfer; and (3) the
 4 propriety of Defendants' alleged handling of that information. Other factual issues will depend
 5 upon the allegations and claims asserted in a consolidated complaint.

6 3. **Legal Issues:** The legal issues involved in these cases will depend upon the
 7 claims included by plaintiffs in the anticipated consolidated complaint. The parties anticipate
 8 that the legal issues may include standing, applicability of the CFAA and the ECPA to the facts
 9 alleged, and whether plaintiffs have stated a claim for relief.

10 4. **Motions:** Currently pending before the Judicial Panel for Multi-District
 11 Litigation ("JPML"), MDL Docket No. 2264, is Google's Motion to Transfer Actions to the
 12 United States District Court for the Northern District of California pursuant to 28 U.S.C. § 1407
 13 for Coordinated or Consolidated Pretrial Proceedings, seeking to transfer to this Court all similar
 14 cases pending in other jurisdictions, as well as any tag-along actions, for consolidated pretrial
 15 proceedings together with the Related Actions ("Google's Motion to Transfer"). All parties to
 16 these related actions support Google's Motion to Transfer, which will be heard on July 28, 2011
 17 before the JPML. The parties expect a decision to issue a few weeks thereafter.

18 In *Levine*, Google filed a motion to relate *Levine* with *King*, *Urias*, and *Lipton*, which
 19 motion was granted by this Court on June 14, 2011 (Dkt. 15). On July 1, 2011, non-party
 20 Pandora Media Inc. filed a motion to relate the Related Actions with an action pending against
 21 Pandora in the Oakland Division of the Northern District of California. (Dkt. 16). On July 5,
 22 2011, the plaintiff in the Pandora action filed an opposition to Pandora's motion to relate. (Dkt.
 23 17). There are no other motions pending in the Related Actions.

24 Pursuant to the pending Stipulation and Proposed Order filed by Google and Plaintiffs on
 25 June 8, 2011 (Dkt. 12), after the JPML issues its order, Plaintiffs intend to use their best efforts

1 to self-organize and recommend to the Court counsel to serve as Interim Class Counsel.

2 Following the appointment of interim lead counsel, Plaintiffs will file a consolidated complaint.

3 Depending upon the allegations and claims asserted, Defendants anticipate that they may file a
4 motion to dismiss.

5 5. **Amendment of Pleadings:** The parties anticipate that Plaintiffs will file an
6 amended pleading following the consolidation of the Related Cases, appointment of Interim
7 Class Counsel, and propose that such amended complaint be filed within 30 days of the Court's
8 Order appointing Interim Class Counsel.

9 6. **Evidence Preservation:** All parties have taken reasonable steps to preserve
10 evidence relevant to the issues reasonably evident in these Related Actions.

11 7. **Disclosures:** In light of the procedural posture of the Related Actions, including
12 Google's pending Motion to Transfer, and the anticipation that the current complaints will be
13 superseded by a consolidated complaint following consolidation of the actions and appointment
14 of Interim Class Counsel, the parties have not yet exchanged Initial Disclosures. Further, the
15 parties have proposed to the Court that their obligation to do so be suspended until after the
16 JPML issues its order on Google's Motion to Transfer and the parties have agreed upon a joint
17 case management order with proposed deadlines for compliance, which they submitted to the
18 Court. *See* Dkt. 12.

19 8. **Discovery:** No discovery has been served to date, and the parties have agreed to
20 suspend, and requested that the Court enter an order suspending all discovery until after the
21 JPML issues its order on Google's Motion to Transfer and the parties have agreed upon a joint
22 case management order with proposed deadlines for compliance, which they submitted to the
23 Court. *See* Dkt. 12.

24 9. **Class Actions:** These cases are putative class actions. The parties agree that a
25 schedule for addressing class certification briefing in the event the anticipated consolidated

1 complaint survives any motion to dismiss, should be part of a joint case management order
 2 submitted for approval following appointment of Interim Class Counsel and the filing of the
 3 anticipated consolidated complaint.

4 10. **Related Cases:** In addition to these four actions, which the Court has already
 5 found to be related, the parties believe that at least the following cases pending in other
 6 jurisdictions, and which are the subject of Google's Motion to Transfer before the JPML are
 7 related:

- 8 a. *Brown. v. Google Inc.*, MIED-11-cv-11867
- 9 b. *Pessano v. Google Inc.*, FLMD-11-cv-01026
- 10 c. *Jefferys v. Google Inc.*, FLSD-11-cv-80676

11 11. **Relief:** Plaintiffs seek certification of a nationwide class of Android users;
 12 permanent injunction against continued release of unique user identifying information;
 13 compensatory damages sustained by Plaintiffs and members of the class; restitution and/or
 14 disgorgement of monies unjustly received as a result of unlawful conduct; statutory and punitive
 15 damages; pre- and post-judgment interest; attorneys' fees and expenses.

16 12. **Settlement and ADR:** No ADR efforts have occurred, and the parties believe
 17 that determining the best means and timing of such efforts is premature until at least after the
 18 appointment of Interim Class Counsel and the anticipated filing of a consolidated complaint.

19 13. **Consent to Magistrate Judge For All Purposes:** The parties do not consent to a
 20 magistrate judge for all purposes.

21 14. **Other References:** The parties do not believe the cases are suitable for binding
 22 arbitration, or that appointment of a special master would be appropriate at this time. As set
 23 forth above, these actions are among the cases that are the subject of Google's Motion to
 24 Transfer pending before the JPML.

1 15. **Narrowing of Issues:** Depending upon the allegations and claims ultimately
2 asserted in the anticipated consolidated complaint, Defendants expect that the case may be
3 narrowed through a motion to dismiss, or through the discovery and class certification schedules
4 in the event the action proceeds past the pleading stage. The parties agree that determining the
5 proper scope and timing of discovery should be postponed until at least after appointment of
6 Interim Class Counsel and the filing of the anticipated consolidated complaint.

7 16. **Expedited Schedule:** This case is not of the type that can be handled on an
8 expedited basis with streamlined procedures.

9 17. **Scheduling:** The parties request that they be permitted to submit to the Court a
10 proposed joint case management order with proposed deadlines for compliance within thirty days
11 of any denial of Defendants' anticipated motion to dismiss following the filing of a consolidated
12 complaint, or, if no such motion is filed, within 30 days of the due date for Defendants' answer
13 to the consolidated complaint.

14 18. **Trial:** Plaintiffs have requested trial by jury as to at least some of their claims; it
15 is not yet possible to estimate the length of the trial.

16 19. **Disclosure of Non-party Interested Entities and Persons:** To the extent they
17 have not already filed a "Certification of Interested Entities or Persons" as required by Civil
18 Local Rule 3-16, the parties have done so concurrently with this statement. Other than putative
19 class members and parties in the related cases, the parties are not aware of any other persons,
20 firms, partnerships, corporations (including parent corporations) or other entities known by the
21 party to have either: (i) a financial interest in the subject matter in controversy or in a party to
22 the proceeding; or (ii) any other kind of interest that could be substantially affected by the
23 outcome of the proceeding.

Pursuant to the above statement, the parties stipulate to and request that the Court enter a Case Management Order No. 1 providing:

1. After the JPML issues its order on Google's Motion to Transfer, Plaintiffs shall use their best efforts to self-organize and recommend to the Court counsel to serve as Interim Class Counsel under FRCP 23(g). The recommendation for lead counsel obtained by self-organizing shall be submitted to the Court within ten (10) days of the issuance by the JPML of its order on Google's Motion to Transfer. Any opposition to the recommendation shall be filed and served no later than fourteen (14) days after the filing of the recommendation with the Court and any reply shall be filed no later than 7 days after the opposition. In all respects, the filings shall comply with Local Rule 7.1, *et al.*
2. No defendant shall have an obligation to answer or otherwise respond to any complaint in any of the Related Actions until: (1) the JPML issues its order on Google's Motion to Transfer, (2) plaintiffs have prepared and submitted to the Court for filing a consolidated complaint, and (3) the parties have agreed upon and the Court has endorsed a schedule for Defendants' responses to the consolidated Complaint.
3. The parties' discovery and disclosure obligations under the Federal Rules of Civil Procedure shall be suspended until after the JPML issues its order on Google's Motion to Transfer and the parties have agreed upon and the Court has endorsed a joint case management order with proposed deadlines for compliance.
4. The parties shall submit to the Court a proposed discovery plan pursuant to Fed. R. Civ. P. 26(f) and a joint case management order with proposed dates for discovery cutoff, experts, hearing of dispositive motions, pretrial conference and trial, within thirty days of any denial of Defendants' anticipated motion to dismiss following the filing of a consolidated complaint, or, if no such motion is filed, within 30 days of the due date for Defendants' answer to the consolidated complaint.

1 Respectfully submitted,

2 DATED: July 28, 2011

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20 By: /s/ Michael H. Rubin
21 Michael H. Rubin

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23 DATED: July 28, 2011

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1 **ECF CERTIFICATION**

2 I, Michael H. Rubin, am the ECF User whose identification and password are being used
3 to file this JOINT CASE MANAGEMENT STATEMENT. I hereby attest that William Audet
4 concurred in this filing.

5 Dated: July 28, 2011

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

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7 By: /s/ Michael H. Rubin
8 Michael H. Rubin
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